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To the student of English economic history, the work will, probably for many years, be an indispensable companion. It will preserve him from the fault which has detracted from much of the historical writing of the last fifty years—the provincialism which, knowing little of the inner life of other countries and dazzled by the brightness of Parliament, imagines an English development altogether different in kind, as well as in degree and period, from that to be seen elsewhere. It is time that the “comparative method,” should begin to be put to its true use.

W. J. ASHLEY.

Military Government and Martial Law. By WILLIAM E. BIRKHIMER, LL.B., First Lieutenant and Adjutant Third U.S. Artillery. Washington, James J. Chapman, 1892. — 8vo, xv, 521 pp.

The terms martial law, military law and military government are employed to denote the three branches into which military government, in the widest sense, may be divided. Military law, in the proper technical sense, is the system of rules, written and customary, to which those who compose the army and navy are specially subject both in peace and in war. With this branch of law the present work is not concerned. It treats of military jurisdiction over the citizens or inhabitants of a country where, in time of war or of civil commotion, the civil authority becomes subordinate to the military. In this aspect it divides military jurisdiction into two branches—military government and martial law. By military government is meant military jurisdiction exercised by the conqueror over territory of the enemy, whether such territory be actually foreign, or foreign in the sense of being inhabited by belligerents in rebellion against the titular government. By martial law is meant the exercise of military rule “over loyal territory of the state enforcing it.” The sense in which the word “loyal” is here used is not precisely defined by the author, but in the light of the context it appears to be intended to signify territory whose inhabitants have not formally assumed and been accorded a belligerent standing.

The enemy territory [he says] over which military government is established may be either without the territorial boundaries of the dominant state, or comprise districts occupied by rebels treated as belligerents within those boundaries. . . . On the other hand, martial law as here considered is purely a domestic fact, being instituted only within districts which, in contemplation of law, are friendly.

To the exercise by the president in time of war of the right to declare and enforce martial law, the author, so far as I am able to discover, sets no limit but the judgment and discretion of that official as to the necessities of the situation.

The safeguards [he says] against martial law are not found in the denial of its protection, but in the amenability of the president to impeachment, of military officers to the civil and criminal laws and to military law; in the frequent changes of public officers, the dependence of the army upon the pleasure of Congress, and the good sense of the troops.

This responsibility, however, attaches to the abuse of the power, rather than to the exercise of it.

To the people of the United States, who live under a constitutional form of government, it is obvious that the question thus suggested is both first in order and first in importance in any discussion of the subject of martial law. If it be true that, the moment war breaks out, it is within the power of the president, guided by his judgment and discretion, to establish martial law anywhere within the United States and to subject all citizens to military authority, it follows that it is within the power of the president in time of war to suspend any and every provision of the Constitution. If such be the law, the "safeguards" suggested by the author against the abuse of this power must be regarded as practically ineffectual. It would afford but slight satisfaction to a peaceful citizen who, though far from the theatre of war, was locked up on suspicion or condemned by a military commission, to be told that his treatment might, perhaps, at some future time, be shown to have been unjustifiable.

Not only is this question not new in the United States, but, as one that has had an intensely practical aspect, it has been the subject of discussions both full and consummately able. The author very properly says: "It may be assumed without greatly erring that the power to suspend the privilege of the writ of *habeas corpus* and the power to declare martial law are not widely different." Hence in President Lincoln's proclamation of September 24, 1862, declaring martial law, the writ of *habeas corpus* was declared to be suspended in respect of all persons arrested or imprisoned by any military authority. I am not able to discover that the author has given the text of this proclamation, or a full summary of its contents, though (as on page 378) he refers to it. Nor, with one or two exceptions, does he seem to be familiar with the valuable constitutional literature of which it formed the subject. Without undertaking a bibliography

of this literature, I may refer to the papers of Binney, Wharton, Bullitt, Ingersoll, Johnson and Jackson. The pamphlet of B. R. Curtis on *Executive Power* is twice cited, but in both instances the name is given as "R. B. Curtis."

The inversion of the initials of a name is not a vital matter, but in the present case it is merely an example of a general imperfection in the citation of authorities. As the book contains no table of cases or list of authorities, vague and insufficient references at the foot of the page are specially onerous to the reader. Thus on page 3, where the first citation of authority is made, we find "4 Cranch, 211; 4 Wheaton, 453; 9 Howard, 603." The titles of the cases referred to are not given, and if a figure should be wrong the reader would be helpless. On page 22 there is a reference to "Cobbett, p. 110 *et seq.*"; and on the same page we find: "See 'Steps Short of War,' Cobbett, p. 95 *et seq.*" The work here referred to is, doubtless, Cobbett's *Cases on International Law*. In this work there is, at the page mentioned, a chapter entitled "Steps Short of War." Again and again we find merely nominal references to "Maine," to "Bluntschli," and to other writers of more than one book and of books that have gone through more than one edition. We find many citations of "Manual." It is probable that the work referred to is the British *Manual of Military Law*, which the author mentions in his text, page 318. There is a citation of "Manual" at least as early as page 28, and there are others at pages 44, 47, 185, 294, *etc.*

While I deem it to be my duty to advert to these defects, I desire to express my appreciation of the spirit in which the present work was conceived, and of the purpose with which it was written. The author was brought to the consideration of the subjects which he treats while he was in the discharge of official duties, and he undertook the preparation of a treatise with a view to elucidate certain questions which are involved in not a little uncertainty and confusion. The assumption of such a task, with such an object, is worthy of all praise. In the present case the value of the result is impaired by a lack of method, order and precision, both in the division and arrangement of topics and in their discussion. For this reason it is sometimes difficult to follow up a subject and ascertain precisely what conclusion has been reached in regard to it. Should the author hereafter have occasion to revise his work, his efforts should be directed, at least in part, to the casting of his text into a more systematic form.

JOHN BASSETT MOORE.